

516. L. 12.
4
601

A FULL AND ACCURATE
R E P O R T
OF THE
T R I A L

BETWEEN

— S T E P H E N S, ~~Esq.~~

TRUSTEE TO E. BOWES,

COMMONLY CALLED

COUNTESS OF STRATHMORE,

AND

ANDREW. ROBINSON STONEY BOWES, Esq.

HER SECOND HUSBAND;

IN THE COURT OF COMMON PLEAS,

BEFORE THE RIGHT HONOURABLE LORD LOUGHBOROUGH,

ON MONDAY, MAY 19th, 1788:

ON AN ISSUE DIRECTED OUT OF THE HIGH COURT OF CHANCERY.

TAKEN IN SHORT HAND.

PRINTED FOR GEORGE KEARSLEY, IN FLEET-STREET.

PRICE TWO SHILLINGS.

Entered at Stationers-Hall.

W. Musgrave.

T R I A L, &c.

STEPHENS, *Trustee of* E. COUNTESS OF STRATHMORE,
against ANDREW ROBINSON BOWES, Esq.

Counsel for the Plaintiff.

Mr. SERJ. ADAIR,
Mr. LAW,
Mr. SERJ. LE BLANC,
Mr. SERJ. LAWRENCE.

Attorney, Mr. Farrer.

Counsel for the Defendant.

Mr. PARTRIDGE,
Mr. SERJ. BOND,
Mr. CHAMBRE.

Attorney, Mr. Wiltshire.

THIS was an *issue* directed out of the HIGH COURT of CHANCERY, to the Court of *Common Pleas*, and the case from which it sprung was simply this—

The Countess of Strathmore, on the 17th of January, 1777, executed a deed to trustees, whereby she vested in them, to her own sole use, all her estates.

She soon after married the defendant *Andrew Robinson Stoney*, Esq. who took upon him the name of Bowes.

On the 1st of May, 1777, Lady Strathmore executed a second deed, whereby she revoked the first deed, and vested *all* her estates in her husband.

The question was, Whether this second deed was obtained by *duress*?

B

MR.

MR. SERJEANT ADAIR opened the case on the part of the plaintiff; in doing which he went through the whole history of Mr. Stoney's life. Stated that he had married a lady of fortune, near Newcastle, who soon after died. That having spent the money he got by her, and become a bankrupt in fame and fortune, he conspired with Parson Bate, then editor of the Morning Post, to impose upon Lady Strathmore; and, to execute their plan, a sham duel was fought, under pretence of vindicating Lady Strathmore from libels inserted in the Post by Parson Bate, in which duel nothing really suffered but a looking-glass, broke by the combatants: that Mr. Bowes pretended to have been wounded; and Lady Strathmore, impressed with gratitude for his supposed gallantry and sufferings, in vindication of her character, had generously given him her hand—had raised him from indigence and obscurity to affluence and situation. Previous to this unfortunate marriage, however, she had providentially executed a deed, dated 17th of January, 1777, securing her estates to herself; but soon after her marriage, when her spirit was broken with continual and unexampled ill-usage, when she had no free will of her own, her ungrateful, her cruel husband extorted from her a deed of revocation, dated May 1st, 1777, vesting all her estates in him. This deed he considered void for two reasons: First, there was no value given: secondly, it was obtained under the influence of terror and fear. As to the first point, Mr. Stoney could shew no value; he brought her a broken fortune, and debilitated constitution, for her manors, castles, lands, and estates—His income was a half-pay lieutenantancy; her rental was fifteen thousand pounds a year. To shew the duress, he stated the ill usage Lady Strathmore had received during her marriage.

marriage. That she had been deprived of her liberty in every respect. The use of her carriage was denied her, unless with his previous permission. Her own old servants were discharged, and the new ones engaged ordered not to attend the ringing of her bell. She durst not write a letter without his inspection, nor look into one sent her till he first perused it. She was treated with foul language, and often chastised with blows; had frequently received black eyes from his savage hands. She was drove from her own table, or often forced to sit at it in company with his prostitutes, till at last she was forced to fly from her house, and apply to the law for justice. These, and many other instances of cruelty were stated by the Recorder, as were also the whole process of the conviction of Mr. Bowes, for a conspiracy, in carrying off Lady Strathmore, while a suit for a divorce, instituted by her, was depending in the Ecclesiastical Court. He then examined the nature and operation of the deed of revocation. He observed upon it, that it left nothing for Lady Strathmore, but excluded her from disposing of the most trifling part of her own property, and did not even make a provision for the children she might have by Mr. Bowes: that she had never read it—he doubted if she ever signed it; and it was such a deed as no friend would have advised her to have signed. He then stated to the jury, that the only question they had to try was, whether the deed *was*, or was *not* obtained by *duress*—and proceeded to call witnesses.

Mr. Wilson, examined by Mr. Law, said, he had been partner with the late Mr. Peele, an attorney, and produced a part of the original deed of the 17th of January, 1777, found in Mr. Peele's escrutoire after his decease. He also produced two letters taken from his file of the year 1777, the one from Lady
 I Strathmore,

Strathmore, the other from Mr. Bowes, demanding from Mr. Peele a rental of Lady Strathmore's estates, and said he never heard of a deed of revocation.

On his cross-examination by Mr. Partridge, he said he had searched his files, but could find no other letters. That Mr. Peele had long done business for the Strathmore family. He knew Gibson, whose name appeared to the deed of revocation; knew that he lived at Newcastle, and was an attorney of eminence and reputation.

George Walker, examined by Mr. Serjeant Lablanc, said, he had lived with Lady Strathmore before and after her marriage with Lord Strathmore. Never saw Mr. Stoney at his Lady's house more than once or twice, which was in January 1777, once at dinner, and once at supper. That the courtship commenced in a sham duel between Mr. Stoney and Parson Bate.

Mr. Partridge submitted to the Court, that the *manner* of the marriage was irrelevant to the question, which took the parties up and respected them as man and wife.

Mr. Serjeant Adair answered, That the question for the Court and Jury being, by what *motive* Lady Strathmore signed the deed of revocation, whether from fear or affection, it was material to shew the cause of the marriage.

Lord Loughborough thought, he ought to admit the evidence, as the deed in question operate as a settlement.

Mr.

Mr. Partridge objected—He observed, that the question was on the execution, not on the effect of the deed.

George Walker (the witness)—That after the duel, he carried a letter from Lady Strathmore to Mr. Bowes, who shewed him a letter from Parson Bate.

Mr. Partridge.—The contents of that letter is no evidence.

Lord Loughborough over-ruled the objection, the letter having been given the witness by the defendant. A letter so given to be read by the plaintiff, his Lordship admitted, would not have been evidence.

George Walker (the witness) said, the substance of the letter was, that Mr. Bate sent his compliments to Mr. Stoney, and would, though not from fear, prevent any paragraphs against Lady Strathmore or Mr. Stoney from appearing in the Morning Post. Said, that Lady Strathmore visited Mr. Stoney that night, sent to inquire after his health the next day, when Mr. Stoney desired him to present his compliments to his Lady, and assure her, that the plaster she had given him last night had quite cured him. The day after this they were married. He believed it was the 17th of January, 1777. On being questioned upon the conduct of Mr. Bowes to Lady Strathmore, the witness answered, That a few days after the marriage, Mr. Bowes brought home some company, and expressed great anger that there was no champagne in the house, and sent for some to a tavern, which came in time enough for the second course. That a gentleman, named O'Burne, having, at dinner, discoursed with Lady Strathmore in French and Italian, Mr.

C

Bowes

Bowes sent a letter to inform her she must answer in English. That Mr. Bowes discharged his Lady's men-servants from attending her person, and soon after sent them out of the service. That he refused her the use of her carriage; an instance of which he knew to have happened in the month of March, 1777, when he said to her, "Don't again order the coach without acquainting me." That Mr. Bowes saw all letters that came directed to her Ladyship. He recollecting taking a letter from the post, and bringing it to his Lady; on which Mr. Bowes called him a rascal for delivering her any letter without first bringing it to him. That at another time he brought a letter to her Ladyship from Newcastle, when she said, "I dare not open it." He gave it then to Mr. Bowes, but cannot say whether he opened it or no. He remembered, that about a week after the marriage, Mr. Bowes desired Lady Strathmore to write a letter to Mr. Peele, her attorney, which letter he carried. Mr. Peele read it in his presence, and the substance of it was, that Mr. Peele should give up a deed in his possession, as nothing could be done without it. He recollected Lord Strathmore coming from school to visit his mother; that Mr. Bowes having dressed him in scarlet, Lady Strathmore said he was too young for scarlet; and Mr. Bowes said, "He shall wear what I please:" but on a visit to his grandmother, his Lordship's clothes were changed. He remembered a Lady, named Bowes, coming to visit Lady Strathmore at Newcastle, sending up her name, and saying, she was a distant relation; on which she was admitted to her Ladyship. That Mr. Bowes was very angry, and desired that he should never introduce any person to her Ladyship without his orders. None but the maid-servants were permitted to answer her bell. He said,

That

That Lady Strathmore had deposited a deed with him, which he kept till the trial at Durham; and that some time after the marriage, she said to him, "George, take care of those parchments I gave you, for I fear I cannot lead my life with Mr. Bowes."

Cross-examined by Mr. Partridge. Said, Mr. Bowes did not visit Lady Strathmore frequently; he only remembers his dining once and supping once at her house in Grosvenor-square, as an acquaintance. He remembers Mr. Gray's visiting her often, and always thought he came as a lover. Heard her say, that the deed of January, 1777, was known to Mr. Gray, and was a proof of his disinterestedness, as he had declared he would settle all her estates upon herself. He remembers the deed was executed at Mr. Peele's house, in Castle-street; that he was a subscribing witness to it, and Mr. Peele was present. Said, he was present at the marriage of Mr. Bowes and his lady. He does not know that Mr. Gray ever slept at Grosvenor-square, but often staid supper: and he supped with Lady Strathmore the night before her marriage with Mr. Stoney. Said, Mrs. Stevens was present, but cannot say what time Gray went away, nor will he swear he went away at all. Said, the marriage was performed at St. James's church, and Mrs. Stevens was present, as also Mr. Davis, a friend to Mr. Bowes. They went from church to Mr. Bowes's lodgings in St. James's-street. Said, that Lady Strathmore interested herself very much in Mr. Bowes's interest, when he stood candidate for Newcastle, though she advised him against it. Said, he had not seen her Ladyship for eight years, nor received any letter from her. That he is not to receive, nor does he expect,

any.

any reward or emolument from her: That she offered to make him under-steward of her land, but he declined it, as not being equal to the task. Said, That the late Lord Strathmore died of a consumption, and was ill a year. He remembers but one letter coming from Mr. Bowes, but will not swear there were not more, as there was another footman. He believes several letters, in a parcel produced, are in the handwriting of Lady Strathmore.

Thomas Mahon said, that in the year 1777 he was valet to Captain Stoney, who lodged in St. James's-street at the time of his marriage with Lady Strathmore. That he frequently saw Mr. Davis with Captain Stoney before his marriage, and he was with him the day of the sham duel with Parson Bate. He was sent that day to Wagdan's, the gun-smith in the Hay-market, for pistols; and on coming to Osborne's Hotel, in the Adelphi, where the duel was fought, found Captain Stoney there. Mr. Stoney married Lady Strathmore a few days after the sham duel. The door of the room, where the duel was fought, was forced open by Mr. George Basil, brother to Mr. Basil of Bucks: he found Captain Stoney sitting on a seat. Davis and Doctor Scott were also there, with another surgeon, Parson Bate, and Captain Donellan, who was since executed. He was sent to the Fantocini, in the Hay-market, for Mr. Matraw, who was to have been Captain Stoney's second. When he came back, Doctor Scott was bleeding Captain Stoney in the arm; he fainted while bleeding: he saw no blood but what came from the lancet. On getting home, Captain Stoney went to bed, and sent for Surgeon Hawkins—who felt his pulse, but did not examine his person, or pre-

scribe any thing for him. He saw two or three holes in Captain Stoney's waistcoat; can be positive to that, as he wore it twelve months after. He did not recollect to see any holes in the shirt, or any blood on it; must have seen them, if there had been any, as it was his own shirt. Mr. Stoney did not borrow his shirt; he had a large stock, nine dozen; this shirt had been given Mr. Stoney by mistake. Said, Captain Stoney was attended by Doctor Scott; Mr. Hawkins never came to him but once, and he never saw any wound upon him.

On being asked, how Captain Stoney behaved himself to Lady Strathmore after his marriage, he said, the Captain gave orders that no letters should come in or go out of the house without his inspection. That he gave him orders to watch and bring him the names of every person who went into the house-keeper's room; which he refused to do, as being beneath him, and no part of his business. Said, that Lady Strathmore one day took out the coach; Mr. Stoney ordered him to follow it, and take an account of every house it stopped at. He followed it a considerable time, then lost it, but got the information he wanted, by giving the coachman a pot of beer. He said, that the use of the coach was denied to Lady Strathmore. That Mr. Stoney sent him one day into the drawing-room for his hat and cane—Lady Strathmore told him, it was in the dressing-room, where he went, and found it. Mr. Stoney met him at the door, drew his sword, and said, "Damn your blood, you did not expect to meet me here;" on which he ran down faster than he came up. Said, he believed Lady Strathmore was much afraid of Mr. Bowes.

D

On

On his cross-examination he said, that Parson Bate did not appear to have been wounded: his breeches were torn upon the thigh, and it appeared to have been done with a hot poker. Donellan was to have been Bate's second, and expressed much dissatisfaction at seeing the point of his sword bent; but neither of the seconds were present at the duel. He said he never saw Mr. Gray but once, could not say whether Mr. Gray was or was not in the house that Lady Strathmore's carriage stopped at the day he was ordered to follow it: acknowledged that Mr. Bowes expressed great surprise at seeing him in the dressing-room of Lady Strathmore, when he went for the hat and cane. That Mr. and Mrs. Stevens left the family soon after the election at Newcastle: that Mr. Bowes and Lady Strathmore went out in the phaeton the day after he was in the dressing-room: can form no idea of Mr. Bowes's motive for being angry at seeing him in the dressing-room, or of sending him after the coach.

George Walker came into Court of himself, to say, that he had forgot to mention his having been sent for by Lady Strathmore, and staying twelve days in the house at Grosvenor-square, till she got away.

Ann Mayne said, she lived with Lady Strathmore before her marriage with Lieutenant Stoney, and till the middle of June following. That her Ladyship was denied the use of her coach; her men-servants had orders not to answer her bell; she dared not go from one room to another without
1
leave;

leave; and all letters that came directed to her were first carried to Mr. Bowes. She knew Mr. and Mrs. Stevens, they left Mr. Bowes's house in April. When asked if she recollected any particular circumstance of ill usage received by her Lady from Mr. Bowes, she said, that one day, Lady Strathmore being dressed to go out, she went into Mr. Bowes's dressing-room, but soon returned, very much dejected and biting her lips; her Ladyship's hat appeared torn, the ribbands were cut; she appeared to have received a blow on the eye, which was swelled and red. The next morning her eye was black, and she had also a black spot on her shoulder. After Lady Strathmore married Mr. Bowes, she gave no orders to her servants; she did not know who did—never knew her to give orders to her tradesmen after her marriage with Mr. Bowes:—she always appeared dull and low-spirited—frequently in tears—and trembling whenever she heard Mr. Bowes coming. Said, that before Lady Strathmore married Mr. Bowes, her natural temper was affable and cheerful, but after marriage it was very different.

On her cross-examination she said—That she was Lady Strathmore's woman, her husband was Mr. Bowes's man, and they parted on a quarrel. She never heard Lady Strathmore order her coach, neither did she ever hear Mr. Bowes restrain her from having it. At Newcastle, Lady Strathmore frequently went out—but never heard her say any thing about the election.

Ann Bell said, she came to live with Lady Strathmore the year before Lord Strathmore died—her Ladyship's disposition was good—she lived in the family three years after the marriage—did not see Mr. Bowes often. On being questioned on particular acts of ill usage, she was proceeding to state evidence of something that happened in 1778;—she *heard* Mr. Bowes——

Mr. Partridge objected—He said the issue confined the evidence to acts prior to the execution of the deed, and that nothing subsequent to that event could be given to the jury.

Mr. Serjeant Adair answered, that this objection was important, a great portion of his evidence being liable to it. He trusted it would not prevail with the Court, as subsequent evidence was relevant to the issue; the question directed to be tried by the Chancellor being,—Whether there was an influence over Lady Strathmore—and that must be collected by posterior as well as anterior evidence, every thing being proper evidence that tends to shew that evidence.

Lord Loughborough.—No subsequent *conduct* of Mr. Bowes can invalidate this deed; but all *directions* from and out of the mouth of Mr. Bowes is competent.

Mrs. Bell.—In the last year she lived in the family she was Miss Bowes's maid.

Mr.

Mr. Chambre.—The question must be confined to what is evidence.

Mrs. Bell. — “ I first saw Mr. Bowes, at Grosvenor-square.”

Mr. Serjeant Adair. — “ What passed upon that occasion?”

The question was over-ruled by the Court—and the witness was directed to confine herself to what she had heard Mr. Bowes say.

Mr. Serjeant Adair. — What orders have you heard Mr. Bowes give to Lady Strathmore?

Mrs. Bell said, She had heard him order her not to communicate any ill usage she received from him. — She heard him give these orders at Streatham, in London, and at Gifford. (The witness stopped.)

Mr. Partridge objected to general evidence; he insisted that the witness should confine herself to the precise time of violence, whether it was before, or after executing the deed of revocation.

Lord Loughborough.—Hear her answer.

Mr. Serjeant Adair argued, that time and place were not necessary.

E

Mr.

Mr. Chambre said — That the witness should not answer the question, because it comprehended an inquiry into facts which should not be given in evidence.

Lord Loughborough — “ I think the question should be “ put.”

Mrs. Bell, being then questioned to the conduct of *Mr. Bowes*, said, That his orders were a great deal in command. That his whole behaviour was cruel and ill-natured in general, and not confined to particular instances. That she heard *Mr. Bowes* order *Lady Strathmore* to tell the servants she had got the black eye by accident.

Mr. Serjeant Adair now said, he would go on with a series of evidence, to shew ill usage on the part of *Mr. Bowes* to *Lady Strathmore*, during the whole time he was with her. He insisted he had a right so to do, and instanced proceedings on conspiracies, where evidence of subsequent facts might be given.

Mr. Law said, this action was in nature of a conspiracy.

Lord Loughborough directed the counsel for *Lady Strathmore* to go through the evidence of facts antecedent to the deed.

Ann Charlton said, That in the year 1777, she frequently visited *Lady Strathmore*—she was a milliner, and worked for her Ladyship. That *Lady Strathmore* had given her directions
for

for a particular trimming, but afterwards countermanded them, saying, Mr. Bowes had ordered her not to have it. She said, that Mr. Bowes's conduct to Lady Strathmore was ill-natured and contemptuous, and recollects seeing a mark on her Ladyship's face in the month of April, 1777. Said, That after Lady Strathmore's marriage with Mr. Bowes, she was melancholy; but before it always smiling.

On her cross-examination, she said, Lady Strathmore always appeared frightened when she heard Mr. Bowes. That she never saw him cruel by any particular act, but by speaking ill-naturedly. He owed her money for Lady Strathmore's millinery, and she was obliged to sue him through two courts.

Ann Woodhead said, She lived with Lady Strathmore before her marriage; that after her marriage all orders were given as coming from Mr. Bowes; and those given by herself did not seem to come from her own free-will.

Elizabeth Gardner said, She was employed to wait on the young ladies. Knew nothing of Mr. Bowes's orders respecting the letters. That Lady Strathmore always appeared in fear of Mr. Bowes.

Margaret Garret said, She lived with Lady Strathmore both before and after her marriage with Mr. Bowes. That after marriage her Lady shewed great alteration in her mind. That soon after the Newcastle election, she saw the torn hat which belonged to her Lady, and also saw her Lady with a black eye. Her Lady appeared to have no will of her own.

Robert Syrett said, He was groom of the chambers, and came to live with Mr. Bowes the day after his marriage with Lady Strathmore. That the carriage was always ordered by Mr. Bowes, and he believed his Lady could not have it but by Mr. Bowes's orders.

Francis Bennet said, He was game-keeper to Lady Strathmore before her marriage. That in the month of February they came to Newcastle, and went from thence to Gibside. That he occasionally waited at table, and observed that Lady Strathmore continually watched Mr. Bowes's motions, and could not take a glass of wine with a gentleman without his making a sign. Said she always appeared under fear; had formerly gone very much into the garden, but after her marriage she could not go into the garden without his leave.

Launcelot Heron said, He lived as footman with Mr. Bowes. That Lady Strathmore seemed to have no direction in the house. All letters directed to her she sent to Mr. Bowes, and he returned to her such as he thought proper. That one day, hearing something heavy fall in the drawing room, he ran up stairs, and saw Mr. Bowes lifting Lady Strathmore off the floor. There was no furniture near her, and the floor was carpetted. Mr. Bowes ordered him to send for a hackney-coach, which he did, and Mr. Bowes went into it with Lady Strathmore. It was then eleven o'clock at night; they returned at three in the morning, and the next day he saw that his Lady had a black eye. He said he had desired the groom

groom to follow the coach, fearing his lady would be ill used by Mr. Bowes.

Mr. Serjeant Adair now informed the Court, that he had closed the evidence of facts, prior to the execution of the deed in question, and offered evidence of ill usage subsequent to that event, to shew that the execution of the deed was under the influence of fear.

Mr. Partridge argued, that the reasons offered ought not to be received. Here, he said, the trial was in a Court of Law, and the Court was bound to advert to the record for the issue the jury were to decide upon, and that issue was, whether the deed was, or was not obtained by *durefs*. This issue, he argued, could only be decided by evidence of the conduct of the parties at the time of signing, or by adverting to their conduct prior to the execution; what passed afterwards was no evidence of *durefs* to be left to a jury. His client, he said, was not prepared to meet such evidence. He came to defend himself against the charge of *durefs*. Subsequent evidence came on him by surprise, which the Court would not allow. It was a general rule of law, that a party is not to be made subject to evidence out of the record. Therefore, only prior, and not subsequent, evidence could be given.

Mr. Serjeant Bond said, he was only prepared for the averment on the record. When Lady Strathmore signed the deed, she acted not under the fear of subsequent consequences.

F

There

There was a case, 11th. Mod. It is there laid, that to constitute duress, the *threat* must be eminent; at the time of executing the instrument it must be immediate. The Plaintiff has given no evidence of threats at the time of executing the deed. No threats of life, of limb, or member at the time. The general conduct of the Defendant is not evidence of Lady Strathmore having been in duress; such conduct might arise from her subsequent bad behaviour. It was not an issue upon the reciprocal *tenderness* of the parties; it was a confined issue upon the single question—"Did Lady Strathmore execute the deed of revocation under *duress*."

Mr. Chambre said, the attempt of offering evidence subsequent to the execution of the deed was new, was unprecedented; no such evidence was ever before offered on a particular fact. "Suppose," said Mr. Chambre, "they had produced no evidence *prior* to the execution of the deed, in that case they would not have been let in to give evidence *subsequent* to it. No evidence can be received that does not advert to the single fact on the record."

Lord Loughborough said, this was an issue out of the Court of Chancery, and he was only to try if the deed of revocation was obtained from Lady Strathmore by *duress*. The Counsel for the Plaintiff has said that it was obtained by *panic* arising from long ill usage. The ill usage then, which induced her to execute the deed must have been *prior*—it could not have been *subsequent*, therefore he must reject evidence of subsequent ill usage. His Lordship observed, that no ill
treat-

treatment was charged to have been given at the time of executing the deed, and the jury were to inquire into the situation Lady Strathmore was in at that time. Subsequent evidence, his Lordship thought, was too remote to try the specific circumstance which the issue directed. It would be trying, by surprise, the whole of the Defendant's life for eight years. For these reasons, his Lordship thought it would be proper to stop the evidence on both sides from going into any facts subsequent to the execution of the deed, and to confine them to anterior facts.

Mr. Serjeant Adair said, since that was the opinion of the Court, he had no more witnesses to call.

D E F E N C E.

MR. PARTRIDGE requested that Counsellor Scot, of the Chancery Bar, might be examined on the part of his client, before he entered into the statement of his defence.

Mr. Serjeant Adair acquiesced.

Mr. Scot said, he had visited Mr. Bowes; had seen Lady Strathmore at Newcastle election, where she appeared like a woman of consequence and fashion: that he could not recollect having ever dined with them or seeing them together previous to that time. That Lady Strathmore appeared

anxious for her husband's success at the election ; and that many persons of respectability interested themselves in his favour. That Mr. Bowes had a strong interest at Newcastle, with great support from Lady Strathmore's interest, without which, he presumed, he would not have offered himself as a candidate ; that he knew Doctor Scott, who was a subscribing witness to the deed of revocation, and also Mr. Gibson, who were both respectable persons ; and that Gibson was a man of eminence and character in his profession.

Mr. Partridge now addressed the Jury on behalf of the Defendant, whom he described as an unfortunate husband, unfortunate indeed ! for in consequence of his wife's conduct he was miserable and distressed. The counsel for the plaintiff had, with ability and address, attacked the passions of the jury.— In glowing colours he had described to them the ill treatment of a husband to his wife ; but the understanding, he observed, should not be seduced from the duty it owed to justice by any application to the feeling. All evidence of ill treatment, subsequent to the execution of the deed, must be laid out of the question. The impression of such evidence had been made, but the jury would sift what they had heard, and leave all subsequent facts out of their minds. The deed itself was the point on which the jury were to exercise their judgments ; they were called to try a simple fact, which was, Whether that deed had been obtained from Lady Strathmore by *duress*. The legal ideas of *duress* did not comprehend general ill usage. It was a technical expression, which had a specific idea annexed to it, and had been defined by Lord Coke, in his first Institutes, to mean the situation of the mind, when a party acted under fear of loss of life or limb. The jury

jury therefore were to inquire, if Lady Strathmore had any reasonable fear of losing life or limb, when she subscribed her name to the deed in question? So far, he said, the evidence had failed, for no such fear had appeared. It was, however, he thought, incumbent on the defendant to shew how the deed was obtained from Lady Strathmore; and he would shew it was executed by her with a free and voluntary mind, with her full deliberation and assent. The situation of the parties, he said, had been unfairly described in the opening. He would shew what their different situations really were. Mr. Bowes was a husband defrauded of the reasonable rights of marriage: for by the original deed, which that in question was to revoke, he was defrauded of that absolute power which the law gives the husband over the personal estate of his wife, and over her real estates for life, or while they lived together. These rights she had improperly reserved to herself, she had defrauded her husband of, by executing a deed without his knowledge immediately previous to her marriage. He then proceeded to describe the situation of Lady Strathmore:—She lost her husband, the Earl of Strathmore, in the spring of life, and in less than five months she receives the addresses of another lover. It was clear, he said, that George Walker, her footman, knew her well—so did Mr. Gray, her lover she had chosen, and whose addresses she had received till the very day she married Mr. Bowes. Such conduct in a lady, he observed, did not favour much of tenderness. He was now to describe her—but how was he to do it? “I shall,” said he, “describe her by what she is *not*, rather than by what she *is*. She is not mild—she is not amiable—she has not temperance—she is not on a level with other women!” He adverted to the circumstance of the duel, of which, he said, there was no proof to shew it was fictitious; but if that was the case, the

jury would recollect that the lady had two lovers, and that stratagem were fair in love, as well as in war. He then stated that the original deed gave Lady Strathmore merely an estate for life; that it was made in contemplation of a marriage, as stated, he was ready to admit, but it was of a marriage with a Mr. Gray, and was never mentioned to Mr. Stoney, of course it was *fraud* on him. He then proceeded to account for Mr. Bowes's strictness. Lady Strathmore, he observed, kept up her connection with Mr. Gray to the very evening before her marriage with Mr. Bowes, and that accounted for his severity: for he had every reason to suppose she had indulged, and that she would continue to indulge, her lover, at the expence of the honour of her husband. "One blow only, he insisted, had been given, and this, as well as every other fact produced in evidence, came from very suspicious witnesses, on whose situation, he hoped, the jury would observe; they were all servants in the family whom Mr. Bowes had discharged. He thought it extraordinary, that a lady of fashion should repose a deed of great trust to the custody of a footman; yet this deed she had committed to the care of George Walker. Had she no friends? had she no relations? Her mother was living; had she no confidence in her? He then pointed out, that Walker's situation, in respect to Lady Strathmore, was such as must *naturally* bias him towards the lady, and of course weaken his credibility with the jury. He laboured to shew, that the witnesses had given evidence but of one black eye, and none of them had proved that Lady Strathmore had received that from Mr. Bowes, nor had any individual witness spoken to two. "But suppose," said he, "it had been proved that one or two blows had been given, it does not follow that they could produce such terror on her mind as would amount to *duress*." He then read a letter, written by
Lady

Lady Strathmore to Mr. Bowes, the night after the duel, in which she declared, she loved him most sincerely, and that the external wounds he had received had wounded her internally; from which he adduced, that her intention to marry him could not have been so sudden as had been represented. Mr. Bowes, he said, had not shewn that avarice imputed to him. He had not taken all he might have taken, which was a proof, that what he took was not by duress. He could have had the deed made to his assigns—he could have had the reversion made over to himself, and, by levying a fine, have secured it to himself in exclusion of his wife, in case Lady Strathmore's children died before they attained the age of twenty one years. Lady Strathmore, he observed, had acquiesced under the deed of revocation for eight years, during which time she had never called on Mr. Stephens, her trustee, but suffered Mr. Bowes to receive the rents and profits of the estates under the authority of that very deed, which she now calls in question. Much, he observed, had been said of character, but neither the character of Mr. Bowes, or of Lady Strathmore, were to decide the question before the Jury. The question went to every person's property, for deeds were not to be set aside, but upon strong and indisputable evidence; and as no such evidence appeared against the deed of revocation, he trusted that the Jury would find that the deed was not obtained by duress.

Mr. Law desired that Mrs. Stevens should retire from the Court while Mr. Hunter was examining.

Mr. John Hunter, surgeon, said, on the deed of revocation being produced to him, that he recollected now, that the signature of his name was his hand-writing; but when applied to before, he had not immediately recollected it. He recollected
some

some circumstances attending the execution of the deed. He recollected dining with Mr. Bowes and Lady Strathmore, and that Mr. Gibson and Dr. Scot were at dinner. That at dinner Mr. Bowes asked him if he had any objection to witness a deed; to which he said no; and signed it, but does not recollect that it was first read. He was clear that nothing of improper restraint was used to Lady Strathmore; if there had, he would not have put his hand to the deed. He recollected Dr. Scot and Mr. Gibson both signed it.

On his cross-examination, he said, he recollected nothing extraordinary to have happened at the transaction; and thinks, if the deed had been read, he should have remembered it. It was after dinner the deed was executed, and at the time there were bottles and glasses remaining on the table. He cannot remember whether any other person than those he has mentioned was present. He knows Mrs. Stevens, but cannot remember whether she was present or not, nor does he remember at what time Mrs. Stevens left the family. He knew Lady Strathmore when she married Lord Strathmore, but cannot say that he ever saw her drink more than a lady ought, as a glass or two of wine at dinner. He perceived that Mr. Bowes, at his setting out after marriage, behaved properly to Lady Strathmore, who wanted a guide, but he thought Mr. Bowes latterly carried it too far; and five or six days before Lady Strathmore eloped, he told him he would lose the lady.

Mrs. Stevens said, she had been long and intimately acquainted with Lady Strathmore, and was a resident at her house for a long time previous to the execution of the deed of revocation. Her sister had lived several years in the family before her, and was in great intimacy with Lady Strathmore. That she had seen her

seen her Ladyship execute several instruments. Had seen her sign an instrument, which, from a conversation she had afterwards with her, she supposed was a deed of revocation. She thought the deed she alluded to was executed about the latter end of April, or the beginning of May, 1777; does not recollect whether it was Mr. Gibson, or any other gentleman, who was in the room. She thinks the conversation she had with Lady Strathmore was in the afternoon. That Lady Strathmore asked her, if she knew what she had signed, to which she (the witness) answered, "I do not." Lady Strathmore replied, "Then I have made over all my estates to Mr. Bowes." The witness asked, "Have you reserved nothing to yourself?" Lady Strathmore answered, "Nothing; but I am sure Mr. Bowes will never use me ill." On being interrogated upon the manners and conduct of Lady Strathmore, she said, that her ladyship was very improper in eating, drinking, and clothing; that she was too familiar with her servants, and particularly with George Walker. That she knew Mr. Gray, and Lady Strathmore was very improperly connected with him. That her conduct, after marriage with Mr. Bowes, was marked with more propriety than before; that she appeared, after marriage, to be mistress of her own actions, as much so as any married woman she had ever known. That Lady Strathmore had never complained of Mr. Bowes, while she resided with her; on the contrary, always spoke of him with great kindness. She never recollected such a circumstance as her ladyship having a black eye, and it could not have happened while she was in the family. She is convinced there was no improper influence used in procuring the execution of the deed.

On her cross-examination, she said, that the deed was executed in the drawing-room, but could not recollect whether
H there

there were bottles on the table or not. That Lady Strathmore was intemperate in her drinking of wine, and wine and water. That she never knew of any advertisement being put into the papers, by Lady Strathmore, to procure her a husband. Her husband received a thousand pounds from Lady Strathmore, the day after she married Mr. Bowes. She knew of Lady Strathmore's improper connection with Mr. ———, before her ladyship married Mr. Bowes. Her husband is a clergyman, and has an annuity of two hundred pounds granted him by a joint bond from Lady Strathmore and Mr. Bowes. She recollects that Lady Strathmore did lie separately from Mr. Bowes one night at Gibside. She sometimes dines with Mr. Bowes in the King's Bench ; and sometimes rides in his coach with Mrs. Peacock, a lady, of near sixty. She never rode out, or sat with any young woman belonging to Mr. Bowes.

Mr. Law asked her, if Mr. Bowes had ever come out of her room at five o'clock in the morning, when the family were at Gibside ?

Mr. Stevens, the lady's husband, took fire at the question, which he called a base attempt to flay the reputation of a virtuous woman.

Mr. Law said he would prove by a witness the fact he had advanced.

Lord Loughborough said, Mr. Law had a right to ask the question.

Mrs. Stevens said, she had no objection to answer it, and added, " Upon my oath, Mr. Bowes never came out of my bed-chamber, to my knowledge." She then proved several letters produced to be in the hand-writing of Lady Strathmore.

On

On being questioned by *Lord Loughborough*, she said, she could not recollect whether Doctor Scot, or Mr. Hunter, were present at the execution of the deed, or even whether Mr. Bowes signed it; she could only recollect being present, and that she sat on one side.

The *Rev. Mr. Stevens* said, he was husband to the last witness. He had known Lady Strathmore and Mr. Bowes since the year 1776. That when he married his wife she had no fortune, and he gave up two hundred pounds a year to get into Lady Strathmore's family. Mr. Bowes, he said, visited at the house as soon as he did. Lady Strathmore promised on his marriage to make good what he had given up, and to prefer him in the church. She gave him a thousand pounds to pay his debts, and he was married within ten days after he became acquainted with his wife. He said, that Lady Strathmore then resided in Grosvenor-square. He saw Mr. Bowes there frequently, visiting as a particular acquaintance, and to his knowledge, several common notes passed between Mr. Bowes and her ladyship. Mr. Gray, he said, visited as a person intending to marry her Ladyship; indeed he thought for some time that they were married. Mr. Gray lived in Portman-square. He continued in Mr. Bowes's family till February. He said, that Mr. Bowes's behaviour to Lady Strathmore was perfectly proper in every particular, and after marriage Lady Strathmore's behaviour was much better than it had been before. She never complained to him of ill usage. When Mr. Bowes and Lady Strathmore went to Newcastle, he remained in town. They were absent about a month, and after the time of their return, he never saw any improper conduct on the part of Mr. Bowes, or heard Lady Strathmore complain of his behaviour to her. He has often

seen Lady Strathmore's conduct inconsistent with a woman of character and fashion; her temper was extremely capricious, and she was not easily governed. Said he left the family ten days after Mr. Bowes returned from Newcastle, and went to France with his wife; visited them on his return in April, often saw Mr. Hunter there; but does not recollect to have seen Mr. Gibson.

On his cross examination, he said, that he had given up a chaplaincy, and a minor canon's office, to get into Lady Strathmore's family. That the thousand pounds he received was paid to him the day after Mr. Bowes married Lady Strathmore. He acknowledged that Mr. Bowes paid for the lodgings in which he now resided, and thought him bound so to do, as he was in town on his business. Said he had wrote letters to Lady Strathmore, with an intent to bring about a reconciliation.

In answer to Lord Loughborough, he said, that he left the family because he was ashamed of the connection; he had got an equivalent for what he had given up, and was glad to leave the house.

Mr. Fetherstone said, he had seen Mr. Bowes, and Lady Strathmore, both at Newcastle, and at Gibside, and Mr. Bowes's conduct was very proper.

Mrs. Gibson. She had seen Mr. Bowes and Lady Strathmore frequently together, and their behaviour was always marked with great propriety to each other.

Mrs.

Mrs. Abbs said, She had seen them together at Newcastle and Gibside, and never perceived the least ill conduct from Mr. Bowes to his wife.

A number of letters from Lady Strathmore to Mr. Bowes, written before marriage, were now read, several of which began with "Lady Strathmore and Mrs. Stevens present their compliments to Captain Stoney."—Several of them were invitations to dinner and supper, and they were read to contradict the evidence of Walker, who had said that Captain Stoney had never been but twice at Lady Strathmore's before he married her.

FOR THE PLAINTIFF.

Mr. Lyons said, He was a relation of the late Lord Strathmore's, and never saw any sign of intoxication in Lady Strathmore.

On his cross-examination, he said, he was a very distant relation, followed the trade of a coal-merchant, and had not visited Lady Strathmore after her marrying Mr. Bowes.

Thomas Mabon, called to prove the fact charged upon Mrs. Stevens, said, He remembers Mrs. Stevens at Gibside; it was soon after the Newcastle election. He saw Mr. Bowes, early in the morning, about five o'clock by his watch, come from Mrs. Stevens's bed-room. Said he was above stairs, and hearing the creaking of a door below, he descended four steps,
I and

and looking over the bannister, saw Mr. Bowes come out. He then went to his own room, and into bed; and Mr. Bowes called him soon after, when he answered as if he had been asleep.

On his cross-examination, he said, It was light enough to see his watch. He could not recollect the month. He was in his shirt, and got up for a very bad purpose; it was with a design to get into the room of the woman he had since married; but the door was locked, and he was disappointed. He did not get into the room; if he had he should have been apt to have jumped into the bed, and then she never would have had the honour of being called Mrs. Mahon. He said, when he looked over the bannisters, Mr. Bowes could not have been above four yards from him, and was dressed in the clothes he wore the evening before. He said, that on the night before, he would have undressed Mr. Bowes as usual; but Mr. Bowes refused his assistance, and told him he might go to-bed. He was now valet to Lord Kinnaird.

Mrs. Mahon said, There was a separate bed made up for Mr. Bowes one night at Gibside; that as she was dressing Lady Strathmore the next day, Mrs. Stevens asked her if she had heard her door creak, and complained it had been a windy night. She had heard no noise. Mrs. Stevens lay under her.

Mrs. Gibson, Mrs. Abbs, Mr. Fetherstone, and other witnesses who were in Court, were now called upon to the character of Mrs. Stevens, and all concurred that she was a woman of the most unblemished character, universally liked in
 6 the

the country where she lived, and visited by the most respectable persons.

Mr. Partridge here observed upon the evidence given by *Mr. Lyons* and *Mahon*: — The former, he observed, knew nothing of *Lady Strathmore's* conduct after her marriage with *Mr. Bowes*, and the manner and impudence of the latter took all credit from him, even if he was sober; but in fact he was extremely drunk.

Mr. Recorder now replied on the part of the plaintiff.— He trusted the jury would observe, that no witnesses had been called to support the evidence, which, from the statement of the defendant's case, they had reason to suppose would have been produced against *Lady Strathmore*.

He adverted to his opening speech, and in answer to *Mr. Partridge's* animadversions on it, asked the jury if he had stated any thing against *Mr. Bowes* but his infamy in gaining *Lady Strathmore's* affections, and his cruelty afterwards.

He would then have gone into an affidavit made by *Mr. Bowes*, on another occasion, in the Court of King's-Bench; but *Lord Loughborough* desired him to stick to the evidence in the cause.

Being thus restrained, he told the Jury it was their duty to forget a great part of *Mr. Bowes's* cruelty, and recapitulating each act he had stated at his opening, told them, as he repeated each, they must forget it.

But he said it was their duty to remember the manner in which

which Mr. Bowes had brought about his marriage, and the cruelty he exercised upon his wife afterwards. He had counterfeited gallantry, he had counterfeited love; but a man of honour would not have counterfeited virtues that never existed in his breast. He here entered into a number of severe observations on the duel; called Mr. Bowes an honourable Captain, who had borrowed his servant's shirt to fight a duel—who had been bled in the arm, when he had bled no where else. On Lady Strathmore's letter he was copious. He considered it evidence of a mind naturally tender, and easily imposed on; and declared, if the defendant's counsel had not produced it, he would have called for it. He then quoted several passages from it, particularly her declaration, "I sincerely love you;" from whence he adduced, that the conduct of Mr. Bowes was marked with ingratitude. He differed with Mr. Partridge on his legal idea of *durefs*, which he said was not so restrained in its definition, as had been laid down, but included any fear or influence operating upon the party at the time of executing a deed or instrument. It was not, he said, confined to life or limb: fear of gross violence, or of a repetition of cruelties, would constitute *durefs*. The Jury, therefore, had to consider, if such fear operated on Lady Strathmore when she signed the deed of revocation, by which she gave to Mr. Bowes all her lands, her castles, her mansions. The description of the parties, he said, was widely different from what had been given by Mr. Partridge. On one side, was a lady, family, and great estates; on the other, a half-pay lieutenant, without fame or fortune. The witnesses for the plaintiff, he observed, were numerous, were consistent, and all stood unimpeached; on the other side, there were but two, Mr. and Mrs. Stevens. He would not urge any thing against the feelings of the Lady; but he must point out, that in several particulars she had varied materially from the

the

the evidence given by Mr. Hunter. He went through, and observed upon every fact given in evidence, and concluded with saying, that from the evidence before them, the Jury were to decide, from what motive Lady Strathmore signed the deed—whether from affection, or from fear?

Lord Loughborough said, That in giving charge, he should not take up much time. The question for the Jury was simply, Whether the deed of revocation was executed by Lady Strathmore under duress, or not? This was the issue between the parties, and which appeared upon the record, and he would not sum up any evidence that did not appear to him relative to that issue. There were, however, he said, principles of morality laid down by the counsel, which it was his duty to notice, and which immediately respected the marriage. In this marriage, neither the happiness of the husband or the wife appeared to be the motive. It was on the part of Mr. Bowes sheer avarice, and the marriage was brought about by a mere trick, a trick which, put in practice to get a hundred pounds of her property, would have been a cheat, for which he must have answered criminally. This part of the subject had been treated by the defendant's counsel with too much levity, when he considered it as a fair stratagem. The marriage contract should be free from every species of imposition; it should be founded in honour and affection;—but besides this, there were many other bad circumstances in the case.

It had been imputed to the defendant, that the execution of the first deed had been fraudulent on the marital rights of the husband; but that did not appear. The contrary appeared: it appeared that the original deed had been made in contemplation of a marriage with Mr. Gray, not of a marriage with Mr. Bowes.

The deed in question, his Lordship observed, was a simple revocation of the former deed, leaving nothing for the wife: as such, it was not an honourable bargain, it was not a fair one, it was not such a bargain as any friend would have advised the lady to enter into.

He said, It was certainly a principle in law, that every deed must stand good till impeached. This deed is now impeached, and the impeachment is duress. The question then for the jury to decide on is, If she was in fear of bodily harm when she executed it, or under dread from what she had suffered? for such dread was duress.

His Lordship, in the course of his charge, summed up and observed on the different parts of the evidence, in which he gave his opinion, that the weight of credibility was on the part of the plaintiff.

His Lordship observed, that between man and wife it was very difficult to find witnesses, therefore, in this case, objections to the witnesses could not have any material weight. The evidence must be always according to the nature of the case; of course, in the present instance, minute circumstances must have weight.

He thought the Jury should judge of the fear which might be supposed to have operated upon Lady Strathmore's mind when she executed the deed, from the circumstances attending it, from her situation, and from her constitution; and the letter she wrote to Mr. Bowes, after his duel with Mr. Bate, showed that she possessed strong sensibility.

The defence set up, his Lordship observed, admitted a degree of restraint, for it charged her with vices of the grossest kind. Mrs. Stevens, in words which female delicacy dictated, clearly applied to Lady Strathmore an improper connection with George Walker, the footman, and, beyond all doubt, a criminal intercourse with Mr. Gray.—Mr. Stevens went the same length, and yet they both say she was not under any improper restraint; though the defendant's Counsel admit she was in some degree restrained, and that it was necessary. But his Lordship thought the merits and demerits of Lady Strathmore were entirely out of the question, if force was used either before or at the time of executing the deed of revocation.

The Jury, without retiring, brought in their verdict, that the deed was executed under *duress*.

Of course the deed of revocation will be set aside in the Court of Chancery.

F I N I S.

1881

The defense for the defendant's counsel
a degree of insanity, but the evidence
proved that the defendant was sane at the time
of the crime. The evidence was that the
defendant was sane at the time of the crime
and was not insane at the time of the crime.
The evidence was that the defendant was sane
at the time of the crime and was not insane
at the time of the crime. The evidence was
that the defendant was sane at the time of
the crime and was not insane at the time of
the crime.

The jury, without dissent, found that
the deed was executed by the defendant.
Of course, a finding of insanity would be
fatal to the prosecution.

IN WITNESS WHEREOF

7

